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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,518	01/23/2004	Craig D. Marriott	GP-302939	7222

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EXAMINER

KAMEN, NOAH P

ART UNIT	PAPER NUMBER
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3747

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SJA

Office Action Summary

Application No.

10/763,518

Applicant(s)

MARRIOTT, CRAIG D.

Examiner

Noah Kamen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-11, 13-20 and 22-31 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 2-11, 13-20 and 22-31 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____.

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of the claims is withdrawn in view of the newly discovered reference(s) to Kimura. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

Claims 2-11, 13-20, and 22-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 5, 17, and 25, it is not clear what the relationship of the "operational categories" is to the engine load. The claims should make it clear that the categories include engine load as a parameter. Furthermore, the independent claims are inaccurate; the configuration may not change between partial and full load depending on engine speed. Additionally, claims 10, 18, and 30 contradict claims 5, 17, and 25, respectively.

Claims 3, 4, 14, 23, and 24 are redundant.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-8, 10, 13-19, 22-28, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimura (JP 59-126028).

The figures show a tuning valve 5 responsive to speed and load (NOTE FIGURE 3). The valve being closed during high speed and load, and during low speed and load. The threshold speed

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Ns is deemed inherently where efficiency is constant. There is a controller 10 responsive to sensors 11,12.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 16, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura as applied to claims 5, 17, and 25 above, and further in view of Rush (4549506), Wada (4793294), or Nomura et al (6722335). Kimura shows the tuning valve 5 being upstream of the two plenums 2. All of the secondary references show the tuning valve being located directly between the plenums; to do likewise in Kimura for a more compact arrangement would have been obvious to one of ordinary skill in the art.

Allowable Subject Matter

Claims 9, 20 and 29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah Kamen whose telephone number is 571 272 4845. The examiner can normally be reached on M-Th 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Yuen can be reached on 571 272 4856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Noah Kamen
Primary Examiner
Art Unit 3747

nk